

88TH CONGRESS <i>1st Session</i>	} HOUSE OF REPRESENTATIVES {	REPORT No. 108
-------------------------------------	------------------------------	-------------------

---

AMENDING THE INTERNAL SECURITY ACT OF 1950 TO  
PROVIDE FOR MAXIMUM PERSONNEL SECURITY IN  
THE NATIONAL SECURITY AGENCY

---

MARCH 13, 1963.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

---

Mr. WALTER, from the Committee on Un-American Activities,  
submitted the following

R E P O R T

[To accompany H.R. 950]

The Committee on Un-American Activities, to whom was referred the bill (H.R. 950) to amend the Internal Security Act of 1950 by adding thereto title III establishing a legislative base for personnel security procedures in the National Security Agency, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to establish a legislative base for enforcing a strict security standard for the employment, and retention in employment, of persons in the National Security Agency; to achieve maximum security for the activities of the Agency; to strengthen the capability of the Secretary of Defense and the Director of the Agency to provide for such by authorizing the Secretary of Defense summarily to terminate the employment of any officer or employee of the Agency whenever he considers that action to be in the interest of the United States, and by expressly excepting appointments to the Agency positions from the Civil Service Act of 1883 and from the provisions of the Performance Rating Act of 1950.

LEGISLATIVE HISTORY

An identical bill, H.R. 12082, passed the House in the 2d session of the 87th Congress, under suspension of the rules. The vote recorded in favor of passage of the bill on September 19, 1962, was

85006

## 2 PERSONNEL SECURITY IN THE NATIONAL SECURITY AGENCY

351 for the bill and 24 against. The bill was passed by the House late in the session and the Senate took no action. The Department of Defense recommended enactment of H.R. 12082. The Department of Justice and the Civil Service Commission were not opposed to its enactment.

The views of the Departments of Defense and Justice, and the Civil Service Commission, with respect to H.R. 950, reaffirmed the position taken upon the same bill H.R. 12082 of the 87th Congress. In view of the fact that the provisions of the bill, H.R. 12082, were thoroughly heard and considered by the committee in the preceding Congress, no further hearings were deemed necessary concerning H.R. 950. What was said in the report on H.R. 12082, filed August 2, 1962 (Rept. 2120) is repeated in part in this report.

In June of 1960, two employees of the National Security Agency, who had access to top secret cryptologic information, defected to the Soviet Union. This committee conducted an extensive investigation of the circumstances surrounding the defection, together with a thorough and detailed examination of the personnel security regulations and procedures in effect at the time of the defection, and of subsequent measures taken by the Agency to resolve any weaknesses in its procedures. A detailed report of the investigation, titled, "Security Practices in the National Security Agency—Defection of Bernon F. Mitchell and William H. Martin," was made to the House on August 13, 1962, and need not be repeated here.

Upon completion of the committee investigation, the committee concluded that additional legislation was necessary to achieve maximum security for the activities of the Agency, and Chairman Walter introduced H.R. 10174 on February 8, 1962, for that purpose. On March 21, 1962, hearings upon this bill were held in executive session, at which time interested departments of Government, namely, Defense and Justice, together with the Civil Service Commission, were invited to present their views. Assistant Secretary of Defense John H. Rubel, accompanied by Vice Adm. Laurence H. Frost, then Director of the National Security Agency; Frank A. Bartimo, Assistant General Counsel (Manpower) of the Department of Defense; and Roy Banner, Counsel for the National Security Agency, testified concerning the need for this legislation. All concurred in the necessity for it. Mr. John W. Macy, Jr., Chairman, and Lawrence V. Meloy, General Counsel of the Civil Service Commission, also appeared before the committee to present the views of the Commission.

In the light of overriding security considerations it was not then, and is not now, deemed appropriate to set forth in detail the matters presented by the witnesses at the hearing. Indeed, Congress has provided in section 6 of Public Law 36, 86th Congress, that no law shall be construed to require the disclosure of an activity or function of the Agency. The committee believes it sufficient to say that its inquiries were met with the full cooperation of the witnesses.

Certain suggestions were made, and revisions requested, in H.R. 10174 by the Departments of Defense and Justice and the Civil Service Commission. Consequently, on June 12, 1962, a clean bill was introduced by Mr. Walter, H.R. 12082, which incorporated the revisions requested by those agencies. On June 19, 1962, Mr. Scherer, ranking minority member of the committee, introduced an identical bill, H.R. 12207, in support of the chairman's proposal.

On January 9, 1963, in the opening session of the 88th Congress, Mr. Walter repeated his proposal by offering H.R. 950, supported by an identical bill, H.R. 1643, offered on January 10, 1963, by Mr. Johansen, ranking minority member of the committee. On March 6, 1963, the committee met and agreed that H.R. 950 be reported favorably without amendment.

The information developed in the investigation and at the hearing completely justified the need for this legislation and, as will be observed from the departmental opinions set forth in this report, the legislation is fully supported by the Department of Defense, and meets with no objection from the Department of Justice or the Civil Service Commission. The enactment of this legislation will result in no additional cost to the Government.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 301. Regulations for employment security*

The committee desires by this section to establish an authoritative legislative base for enforcing a strict security standard for the employment, and retention in employment, of persons in the National Security Agency. It is believed that express statutory authorization for personnel procedures to be established in the Agency will forestall and preclude any objections that might be raised with respect to the authority for such regulations. In general, the power of the Congress to prescribe standards and qualifications for Federal office and employment would seem to be unquestioned. It may be pointed out, for example, that section 145(b) of the Atomic Energy Act of 1946 establishes security standards for employment in the Atomic Energy Commission.

The further objective of this section is to make clear the intent of Congress that this security standard shall govern employment practices in the Agency, and that procedures be established that will implement this standard, to assure its continuing maintenance in both pre- and post-employment periods and in the conduct of the Agency's operations.

##### *Section 302. Full field investigation and appraisal*

Subsection (a) of this section requires a full field investigation in connection with the employment, detail, or assignment of any person to the Agency, subject to certain qualifications spelled out in the section. The qualifications set forth are designed to give adequate play for the practical operation of the Agency and the recruitment of qualified personnel.

The Agency is faced with especially sensitive security responsibilities. All activities conducted by the National Security Agency are highly classified. Disclosure of the nature of these activities or portions of them could seriously impair the success of the Agency's efforts. Despite separation of tasks into work compartments and other precautions, the large majority of employees of the Agency by virtue of their duties are exposed to, or have access to, uniquely sensitive information. The improper use, handling, or disclosure of this information could have seriously adverse effects upon the national security. Therefore, strict security practices are mandatory.

Subsection (b) establishes in the Agency one or more boards of appraisal to assist the Secretary of Defense and the Director of the Agency in discharging their personnel security responsibilities. It is

4 PERSONNEL SECURITY IN THE NATIONAL SECURITY AGENCY

intended that these boards, composed of specially trained personnel, shall be utilized for the resolution of doubtful security cases. It is considered that in practice the Director will normally refer to such a board only those cases in which he determines that there is a doubt as to whether final clearance for, or continued access to, classified information would be clearly consistent with the national security.

It is important to note that appraisal by such a board is not required, as a matter of law, before the Secretary of Defense can terminate employment. The committee does not intend to establish, nor does this provision mandate, additional procedural requirements to protect the interests of employees or persons assigned in the Agency. Its objective is to require by law that boards of appraisal of highly capable personnel be established to assure that mature consideration shall be given prior to the resolution of doubtful security cases. It is noted that the Director of the Agency has recently set up, on his own initiative, a comparable board and, while the committee commends this action, it considers it advisable that such boards be created by statute to assure their continuing existence and functioning.

*Section 303. Termination of employment*

The section authorizes the Secretary of Defense summarily to terminate the services of employees of the Agency when such action is deemed necessary in the interests of the United States. However, it provides that the Secretary must determine that the procedures prescribed in other provisions of law, authorizing termination of the employment, cannot be invoked consistently with the national security. Such a determination of the Secretary shall be final. This grant of authority recognizes the principle that the responsibility for control of those persons who are to have access to highly classified information should be accompanied by commensurate authority to terminate their employment when their retention and continued access to extremely sensitive information is not clearly consistent with the national security. However, it is provided that the individual whose employment has been terminated may seek or accept employment in any other Government agency provided that the Civil Service Commission determines that he is eligible for such employment.

The section enables the Secretary to terminate employment, when necessary, without jeopardizing the integrity and security of Agency activities through compliance with prolonged adversary proceedings. The committee proposal in this respect is likewise consonant with a finding of the Commission on Government Security in its report of June 21, 1957, to the President and the Congress. The Commission found, from its review of the responsibilities of the National Security Agency, that the national security interests committed to its care were so great, and the consequences of error so devastating, that authority to deviate from a proposed uniform loyalty program for Federal employees should be granted to this Agency. Moreover, statutory precedent exists. Similar authority to that granted in the bill has been vested by the Congress in the Director of Central Intelligence in section 102(c) of the National Security Act of 1947. The activities of the National Security Agency undoubtedly require equivalent protection from disclosure or compromise.

As noted above, this authority shall be exercised only upon a determination by the Secretary of Defense that the normal removal

procedures, involving appeal rights, cannot be applied consistently with the national security. Such a determination of the Secretary shall be final and the basis for the determination will not be subject to review in any administrative or judicial proceeding. This authority is to be exercised circumspectly, and only when removals should not, because of the paramount national security interests, be carried out under Public Law 733 of the 81st Congress with respect to security ground cases, or under section 14 of the Veterans' Preference Act with respect to suitability ground cases.

*Section 304. Definition of classified information*

This section defines "classified information" in the same manner as it is defined in section 798, title 18, United States Code. Section 798 imposes criminal penalties for unauthorized disclosure of certain categories of classified information.

*Section 305. Nonapplicability of Administrative Procedure Act*

This section makes clear that the Administrative Procedure Act shall not apply to the use or exercise of any authority granted by this title. The nature of the National Security Agency, which precludes the disclosure of any activity or function of the Agency, makes necessary the exclusion of procedures established in the Administrative Procedure Act. This would seem to require no further explanation.

*Section 306. Amendments*

Subsection (a) expressly excepts appointments to Agency positions from the provisions of the Civil Service Act of 1883. Agency appointments have been administratively excepted by the U.S. Civil Service Commission, pursuant to Executive Order 10440 of March 31, 1953, from the competitive civil service and placed in schedule A. Statutory exemption obviates the possibility that the present excepted employment authority, granted administratively by the Civil Service Commission, might be withdrawn or amended. Statutory exemption from the competitive civil service enables the Agency to appoint officers and employees without any requirements for disclosure of classified information concerning the duties of individual positions.

Subsection (b) exempts the Agency from provisions of the Performance Rating Act of 1950, which authorizes the Civil Service Commission to inspect the administration of the Agency performance rating plan, and authorizes employees of the Agency to appeal performance ratings to the Civil Service Commission. Certain other agencies which are also engaged in highly sensitive activities are now exempted by the Congress from the provisions of the Performance Rating Act. This section provides further statutory assurance that classified information about the Agency's activities need not be disclosed.

DEPARTMENTAL OPINIONS

The Department of Defense recommends the enactment of H.R. 950. Its views are expressed in the following letter of February 18, 1963, from the office of its General Counsel, which follows:

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,  
*Washington, D.C., February 18, 1963.*

HON. FRANCIS E. WALTER,  
*Chairman, Committee on Un-American Activities,  
House of Representatives.*

DEAR MR. CHAIRMAN: This is in response to your request of January 24, 1963, for the views of the Department of Defense on H.R. 950, a bill to amend the Internal Security Act of 1950.

This bill is identical to H.R. 12082, 87th Congress, on which this Department reported by letter of June 25, 1962. The Department reaffirms the position taken in that letter and again recommends enactment.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

JOHN T. McNAUGHTON.

The Department of Justice, having no objection to the bill, H.R. 12082, reaffirmed its position on the identical bill, H.R. 950, in the following letter of the Deputy Attorney General, dated February 27, 1963, which follows:

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., February 27, 1963.*

HON. FRANCIS E. WALTER,  
*Chairman, Committee on Un-American Activities,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning H.R. 950, a bill to amend the Internal Security Act of 1950.

The bill would add a new title (title III) to the Internal Security Act of 1950, which would deal primarily with the establishment of certain personnel procedures in the National Security Agency. It is identical to H.R. 12082, 87th Congress, concerning which the Department commented in its letter to the committee dated July 23, 1962. The Department's views as expressed therein remain unchanged.

As we stated in our letter to the committee concerning H.R. 12082, we would expect that present procedures would be continued whereby the intelligence agencies of the military departments conduct investigations of National Security Agency applicants and employees and such investigations are referred to the Federal Bureau of Investigation if and when information is elicited indicating that a particular applicant or employee may be of questionable loyalty or may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,  
*Deputy Attorney General.*

The U.S. Civil Service Commission has no objection to the enactment of H.R. 950, and expresses its views in the following letter from its Chairman, of February 27, 1962, which follows:

U.S. CIVIL SERVICE COMMISSION,  
Washington, D.C., February 27, 1963.

HON. FRANCIS E. WALTER,  
Chairman, Committee on Un-American Activities,  
House of Representatives.

DEAR MR. WALTER: This refers to your letter of January 24, 1963, concerning H.R. 950, a bill to amend the Internal Security Act of 1950.

The bill is identical to H.R. 12082, 87th Congress, a committee bill introduced in lieu of H.R. 10174 to incorporate suggestions and revisions requested by the Departments of Defense and Justice, and the Civil Service Commission.

Basically H.R. 950 provides for the preemployment investigation of persons to be employed in, or detailed or assigned to, the National Security Agency, and authorizes the Secretary of Defense to terminate the employment of any officer or employee of the Agency whenever he deems it to be in the interest of the United States. It also includes provisions for appointments "without regard to the civil service laws" and for excepting the Agency from the requirements of the Performance Rating Act of 1950.

Inasmuch as H.R. 950 incorporates the Commission's suggested change in H.R. 10174, we would have no objection to its enactment.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

#### CHANGES IN EXISTING LAW

The bill makes no change in existing law excepting to add to the Internal Security Act of 1950 a new Title III. In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the changes, as reported, include only the addition of the following new matter as a separate title, printed in italic:

#### INTERNAL SECURITY ACT OF 1950 (64 STAT. 987)

AN ACT To protect the United States against certain un-American and subversive activities by requiring registration of Communist organizations, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Internal Security Act of 1950".*

\* \* \* \* \*

*TITLE III—PERSONNEL SECURITY PROCEDURES IN  
NATIONAL SECURITY AGENCY*

*REGULATIONS FOR EMPLOYMENT SECURITY*

*SEC. 301. Subject to the provisions of this title, the Secretary of Defense (hereinafter in this title referred to as the "Secretary") shall prescribe such regulations relating to continuing security procedures as he considers necessary to assure—*

*(1) that no person shall be employed in, or detailed or assigned to, the National Security Agency (hereafter in this title referred to as the "Agency"), or continue to be so employed, detailed, or assigned; and*

*(2) that no person so employed, detailed, or assigned shall have access to any classified information; unless such employment, detail, assignment, or access to classified information is clearly consistent with the national security.*

*FULL FIELD INVESTIGATION AND APPRAISAL*

*SEC. 302. (a) No person shall be employed in, or detailed or assigned to, the Agency unless he has been the subject of a full field investigation in connection with such employment, detail, or assignment, and is cleared for access to classified information in accordance with the provisions of this title; excepting that conditional employment without access to sensitive cryptologic information or material may be tendered any applicant, under such regulations as the Secretary may prescribe, pending the completion of such full field investigation: And provided further, That such full field investigation at the discretion of the Secretary need not be required in the case of persons assigned or detailed to the Agency who have a current security clearance for access to sensitive cryptologic information under equivalent standards of investigation and clearance. During any period of war declared by the Congress, or during any period when the Secretary determines that a national disaster exists, or in exceptional cases in which the Secretary (or his designee for such purpose) makes a determination in writing that his action is necessary or advisable in the national interest, he may authorize the employment of any person in, or the detail or assignment of any person to, the Agency, and may grant to any such person access to classified information, on a temporary basis, pending the completion of the full field investigation and the clearance for access to classified information required by this subsection, if the Secretary determines that such action is clearly consistent with the national security.*

*(b) To assist the Secretary and the Director of the Agency in carrying out their personnel security responsibilities, one or more boards of appraisal of three members each, to be appointed by the Director of the Agency, shall be established in the Agency. Such a board shall appraise the loyalty and suitability of persons for access to classified information, in those cases in which the Director of the Agency determines that there is a doubt whether their access to that information would be clearly consistent with the national security, and shall submit a report and recommendation on each such a case. However, appraisal by such a board is not required before action may be taken under section 14 of the Act of June 27, 1944, chapter 287, as amended (5 U.S.C. 863), section 1 of the Act of August 26, 1950, chapter 803, as amended (5 U.S.C. 22-1), or any other similar*



provision of law. Each member of such a board shall be specially qualified and trained for his duties as such a member, shall have been the subject of a full field investigation in connection with his appointment as such a member, and shall have been cleared by the Director for access to classified information at the time of his appointment as such a member. No person shall be cleared for access to classified information, contrary to the recommendations of any such board, unless the Secretary (or his designee for such purpose) shall make a determination in writing that such employment, detail, assignment, or access to classified information is in the national interest.

#### TERMINATION OF EMPLOYMENT

SEC. 303. (a) Notwithstanding section 14 of the Act of June 27, 1944, chapter 287, as amended (5 U.S.C. 863), section 1 of the Act of August 26, 1950, chapter 803, as amended (5 U.S.C. 22-1), or any other provision of law, the Secretary may terminate the employment of any officer or employee of the Agency whenever he considers that action to be in the interest of the United States, and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of that officer or employee cannot be invoked consistently with the national security. Such a determination is final.

(b) Termination of employment under this section shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the United States Civil Service Commission.

#### DEFINITION OF CLASSIFIED INFORMATION

SEC. 304. For the purposes of this section, the term "classified information" means information which, for reasons of national security, is specifically designated by a United States Government agency for limited or restricted dissemination or distribution.

#### NONAPPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

SEC. 305. The Administrative Procedure Act, as amended (5 U.S.C. 1001 et seq.), shall not apply to the use or exercise of any authority granted by this title.

#### AMENDMENTS

SEC. 306. (a) The first sentence of section 2 of the Act of May 29, 1959 (50 U.S.C. 402 note), is amended by inserting " , without regard to the civil service laws," immediately after "and to appoint thereto."

(b) Subsection (b) of section 2 of the Performance Rating Act of 1950 (5 U.S.C. 2001 (b)) is amended—

(1) by striking out the period at the end of paragraph (13) and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following new paragraph:

"(14) The National Security Agency."

